

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PARDALIS TECHNOLOGY LICENSING, §
LLC, §
§

Plaintiff, §
§

v. §
§

INTERNATIONAL BUSINESS §
MACHINES CORPORATION, §
§

Defendant.

Case No. 2:22-cv-00452-JRG-RSP

REPORT AND RECOMMENDATION

Before the Court is Plaintiff Pardalis Technology Licensing, L.L.C.'s Motion for Judgment on the Pleadings Concerning Inequitable Conduct. (**Dkt. No. 124.**)

Pardalis's motion contends that IBM has not pleaded inequitable conduct yet its expert reports contain opinions on such a defense. IBM responds that a motion for judgment on the pleadings is restricted to the pleadings and thus it would be improper for the Court to grant Pardalis's motion.

The Court agrees with IBM. The Court cannot pass judgment on matters not before it. IBM concedes it has not pleaded inequitable conduct. As such it is not before the Court and the Court cannot pass judgment on it.¹ For that reason, the Court recommends that Pardalis's motion be **DENIED** as moot.

A party's failure to file written objections to the findings, conclusions, and recommendations contained in this report within 14 days bars that party from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions

¹ As it is not pleaded or before the Court, it is also not in the case. IBM will not be permitted to present arguments regarding unpleaded defenses at trial or otherwise.

accepted and adopted by the district court. Fed. R. Civ. P. 72(b)(2); *see Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*). Any objection to this Report and Recommendation must be filed in ECF under the event "Objection to Report and Recommendations [cv, respoth]" or it may not be considered by the District Judge.

SIGNED this 3rd day of September, 2024.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE